

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.338 OF 2023
IN
CRIMINAL APPEAL NO.344 OF 2017

Gulam Nabi Allahuddin Shaikh	 Applicant
In the matter between	
Mohammad Saheb Gaus Gulam	
Nabi Shaikh and others	Appellants
Versus	
State of Maharashtra	 Respondent

Mr. Ashish Satpute, Advocate (appointed as an amicus curiae)
for the Applicant.

Mr. Ajay Patil, APP for the Respondent-State.

**CORAM : M. S. KARNIK, AND
SARANG V. KOTWAL JJ.**

DATE : 31st AUGUST, 2023

P.C. :

1. Heard Shri Ashish Satpute, learned appointed
Advocate for the Applicant and Shri Ajay Patil, learned APP for
the Respondent-State.

2. This is the second bail application preferred by the same accused for his release on bail during pendency of his appeal.

3. The Applicant was the original accused No.3 in Sessions Case No.237/2012 before the Additional Sessions Judge, Nashik. The Applicant and the other two accused were convicted for commission of the offence punishable under Section 302 read with 34 of IPC and they were sentenced to suffer RI for life and to pay fine of Rs.10,000/- and in default to suffer further RI for three years. The Applicant and other two accused preferred Criminal Appeal No.344/2017 before this Court, which is already admitted and is pending final disposal.

4. On the earlier occasion, all the accused including the present Applicant had preferred Criminal Application No.421/2017 in Criminal Appeal No.344/2017 for their release on bail during pendency of the appeal. The said application was rejected vide order dated 3.5.2017 by a reasoned order.

5. Now the present Application is sent through jail by the Applicant on the ground that he is 76 years of age. He is in the custody since his arrest on 21.7.2012. The Appeal is not yet decided. It is also mentioned in the Application that he is suffering from serious diseases, such as diabetes, blood-pressure, heart problems. On these grounds, a fresh application is preferred.

6. In the interest of justice, we have heard learned counsel for the Applicant. He submitted that though on the earlier occasion the application was rejected on merits, there are still important points on merits which will have to be considered. He submitted that the case is based on the evidence of the two eye witnesses PW-4 Mustaq Qureshi and PW-5 Hasan Qureshi. Their evidence is not trustworthy. He submitted that the Applicant deserves to be released on bail. He further submitted that the Appeal is still pending and the Applicant is in custody for more than eleven years as of today.

7. Learned APP opposed these submissions. He pointed out that on the earlier occasions when the Appeal had

reached for final hearing before the different benches of this Court, nobody had appeared for the Appellants and, therefore, the Appeal could not be disposed of. Therefore, the Applicant cannot take advantage of this fact. He further submitted that on the earlier occasion, this Court had passed a reasoned order and there are no grounds to interfere with the view taken by the earlier Division Bench.

8. We have considered these submissions. As rightly submitted by the learned APP, the earlier Bench had considered the evidence of PW-4 and PW-5 and by a reasoned order the application was rejected. The version of eye witnesses is supported by the medical evidence in the form of the postmortem notes. Therefore, we cannot interfere with the reasoned order of rejecting bail application on merits.

9. However, the fact remains that the Applicant is 76 years of age and is in custody for more than eleven years. Therefore, on that ground alone, some sympathetic view can be taken at this stage and the Applicant can be released on bail pending disposal of his appeal. Hence, the following order is

passed :

:: O R D E R ::

- i. During pendency and final disposal of Criminal Appeal No.344/2017, the Applicant is directed to be released on bail on his executing a PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii. The Applicant shall cooperate with early disposal of the appeal during its final hearing stage.
- iii. Interim Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)

(M.S. KARNIK,J.)

PRADIPKUMAR
PRAKASHRAO
DESHMANE

Deshmane (PS)

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